

NURSING HOME REFORM ACT

Overview/Definitions

The Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, more commonly known as Nursing Home Reform (NHR), was passed by Congress adding a new Section 1919 to the Social Security Act. This section requires that the State have a program designed to screen all individuals known or suspected to have mental retardation or a related condition, or serious mental illness who apply as new admissions to Medicaid certified nursing facilities on or after January 1. The law applies to private pay individuals also.

The screening will first confirm or refute the suspected diagnosis. If the diagnosis is confirmed, the screening continues to determine whether, because of the individual's physical and mental health conditions the individual requires nursing facility services. If the person is determined to need nursing facility services, the screening continues to determine whether the person requires specialized services for the diagnosed condition. Persons who are approved for admission must be screened annually thereafter.

State Medicaid agencies were required to implement effective January 1, 1989, whether or not the Department of Health and Human Services' Health Care Financing Administration (HCFA) had promulgated rules and regulations. The final regulations were issued November 30, 1992, and became effective January 29, 1993.

General Terms:

Specialized Services: A continuous program which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services that is directed toward acquisition of the behaviors necessary for the individual to function with as much self determination and independence as possible; and the prevention or deceleration of regression or loss of current optimal functional status.

A specialized service does not include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous specialized services program. (Defined the same as specialized services for an Intermediate Care Facility- for the Mentally Retarded (ICF-MR) within 42 CFR 483.440 of federal regulations, (see Appendix 5.)

Specialized services does not include, in the case of a resident of a nursing facility, services within the scope of services that the nursing facility must provide or arrange for its residents under 1919(b)(4):

Nursing and related services

- specialized rehabilitative services;
- physical therapy
- speech-language pathology
- occupational therapy
- crisis intervention
- individual, group and family psychotherapy
- drug therapy and monitoring of drug therapy
- training in drug therapy management
- structured socialization activities to diminish
- tendencies toward isolation and withdrawal development and maintenance of necessary daily living skills including grooming, personal hygiene, nutrition, health and mental health education, money management, and maintenance of the living environment; and
- Development of appropriate personal support networks.

Physician services

- Medically related social services;
- Pharmaceutical services;
- Dietary services;
- Activities program; and
- Dental services.

Continuous
Residence:

Residence in one or more Medicaid certified nursing facilities without a residential living interruption other than temporary absences for hospitalization or therapeutic leave.

Division of DD:

Missouri Division of Developmental Disabilities

Developmental
Disability:

Defined in Section 102(5) of the 1984 federal Developmental Disabilities Act as a severe, Chronic disability which:

- 1) is attributable to a mental or physical impairment or combination of mental and physical impairments;*
- 2) is manifested before the person attains age twenty-two;*
- 3) is likely to continue indefinitely;*
- 4) results in substantial functional limitations in three or more of the following areas of major life activity:*
 - a) self care,*
 - b) receptive and expressive language,*

- c) *learning,*
- d) *mobility,*
- e) *self-direction,*
- f) *capacity for independent living, and*
- g) *economic self-sufficiency.*

5) *reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.*

Mental Retardation: A condition that results in significantly subaverage general intellectual functioning that originated before age eighteen (18) and that is associated with significant impairment in adaptive behavior.

Condition Related to Mental Retardation:

A condition is related to mental retardation if it:

- a). results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment/services similar to those required by persons with mental retardation;
- b). occurs before the age of twenty-two (22);
- c). is likely to continue indefinitely; and
- d). results in substantial functional limitations in 3 or more of the following major life activities:
 - 1. self-care,
 - 2. understanding and use of language,
 - 3. learning,
 - 4. mobility,
 - 5. self-direction, and
 - 6. capacity for independent living.

Examples of diagnoses that may qualify as a related condition if all of the above criteria are met are: cerebral palsy, epilepsy, head or spinal cord injury, autism, severe hearing and visual impairment, multiple sclerosis, spina bifida, muscular dystrophy, or orthopedic impairment. **Mental illness is not considered a related condition.**

Inter-Facility Transfer:

Transfer from a Medicaid certified bed in one nursing facility, transfer to a Medicaid certified bed in another facility, with or without an intervening hospitalization.

Level I Pre-Admission Screening:	A form (DA-124C) is completed by the State Medicaid agency's designees for anyone, regardless of payment source who is seeking admission to a Medicaid certified nursing facility. The Department Health and Senior Services screens information entered on the form. Individuals identified as suspected or known to have mental retardation or a condition related to mental retardation are referred to DMH for a Level II, Preadmission Evaluation.
Level II:	An evaluation, made by the State Mental Retardation and Developmental Disabilities Preadmission authority. The purpose is to determine whether the individual has mental retardation or a related Evaluation condition and if the individual's service needs can be appropriately met in a nursing facility.
NHR:	Nursing Home Reform Act [a/k/a the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100-203].
NF:	A nursing facility certified to participate in the Medicaid program. Nursing facilities are licensed by the Department of Health and Senior Services as Intermediate Care Facilities (ICF) or Skilled Nursing Facilities (SNF). However, not all licensed ICF or SNF facilities are Medicaid certified. NF also <u>does not include</u> the Intermediate Care Facility Mental Retardation (ICF-MR) facilities.
NF Level of Care:	The Department of Health and Senior Services responsible for determining if an individual requires nursing facility level of care by applying Missouri State Regulation 13 CSR 15-9.030 and determining if an individual is medically eligible for Title XIX funded nursing facility level of care.
NF Level of Services:	DMH is responsible for determining if an individual needs nursing facility level of services. NF level of services is the identification of specific service needs resulting from Mental Retardation and/or related conditions that an individual will require if residing in a nursing facility.
Or Related- Condition:	Used in the Omnibus Budget Reconciliation Act of 1987 (a/k/a Nursing Home Reform Act) to reference a condition closely related to mental retardation. The State has chosen to use the federal developmental disabilities definition provided earlier in this section to encompass "related condition".
PAS:	Preadmission Screening (PAS)

State Medicaid Agency:	Missouri Department of Social Services (DOSS). Most activities and responsibilities are carried out through DOSS' Division of Medical Services, Division of Family Service or the Department of Health and Senior Services.
State Mental Health Authority:	The Missouri Division of Comprehensive Psychiatric Services (CPS)
State Mental Retardation Authority:	The Missouri Division of Developmental Disabilities (DD).
Missouri Care Options:	Prior to admission to a nursing facility, all applicants in Missouri must first be screened by the Department of Health and Senior Services to determine if the individual's needs for services can be met by alternative programs, i.e., Residential Care Center, in-home services, etc. Nursing facilities, hospitals, case managers, family member, etc. may initiate the screen by calling 1-800-392-0210. This screening process precedes Preadmission Screening process in Missouri, but in no way exempts' individuals from the federally mandated Preadmission Screening process.

Guiding Principles

This program is federally mandated. The program determines if an individual who is entering a Medicaid Nursing Facility meets the criteria set forth in the Federal Regulations.

Policies

All individuals know or suspected to have Mental Retardation or a related condition, or a serious mental illness and are applying for admission to a Medicaid nursing facility will have a Preadmission Screening preformed.

Eligibility

The purpose of the screening is to determine:

- a. Does the individual meet the Federal Definition of DD? If yes
- b. Does the individual require nursing facility level of services? If yes ...
- c. Does the individual need specialized services?

Procedures

Level I Pre-Admission Screening Responsibilities

Preadmission Screening

There are two levels of preadmission screenings. Level I is done by those designated by the State Medicaid agency (e.g. hospitals, nursing facilities, physicians, etc.). The act requires a Level I screening determination for all individuals seeking admission to a Medicaid certified nursing facility, regardless of the method of payment, to determine if the individual is known or suspected to have a serious mental illness, or mental retardation or a condition related to mental retardation.

Individuals known or suspected to have these conditions are identified through completion of the Department of Health and Senior Services DA 124-C form. Completion of this form is considered the Level I screen. Individuals identified through the Level I screen as suspected or known to have mental retardation, a condition related to mental retardation, or a serious mental illness, are referred for a Level II screening which must be conducted prior to admission unless the individual seeking admission qualifies for a special admission as described on the DA 124-C form. (See Special Admissions.)

Level II Pre-Admission Screening Responsibilities

Within Missouri, the Division of Developmental Disabilities (DD) is designated the State mental retardation authority and the Division of Comprehensive Psychiatric Services (CPS) is designated the State mental health authority. Each has the responsibility for the Level II pre-admission evaluations for their respective service populations. Should an individual have both diagnoses, each division completes an evaluation utilizing applicable criteria? Coordination and sharing of information between the two divisions must be done to the extent possible. The policies and procedures from this point on are applicable to DD.

DD has responsibility under the Nursing Home Reform (NHR) Act to conduct a Level II screening for applicants identified during the Level I preadmission screening process. The preadmission screenings are conducted to determine: 1) does the individual have mental retardation or a related condition? If yes; 2) does the individual require nursing facility level of services? And, if yes; 3) does the individual need specialized services?

A nursing facility may not, without violating federal conditions for participation, admit an individual with mental retardation or a related condition to a Medicaid certified bed if it is determined by DD that nursing facility level of services are not required. Individuals needing specialized services may not be admitted to a nursing facility unless (1) their medical/mental health condition prevents them from participating and/or receiving benefit from a specialized services program, (2) the specific nursing facility has been approved by the State Medicaid agency as being able to provide specialized services, or (3) the State has arranged for the individual to receive specialized services in the nursing facility.

Time Frame

Federal regulations require Level II pre-admission *determinations* are made within an annual average of seven (7) to nine (9) working days of receipt by the regional office of the preadmission screening request. When the medical review unit sends a request for a Level II PAS to the regional

office, the request will be assigned a due date which must be adhered to. Completing and faxing the turn-around determination form back to the central office medical review unit serves as the written determination.

Staff Requirements

DD staffs who may participate in completing the pre-admission screening or initial screening of any resident of a nursing facility who has not been screened by DD prior to admission are:

- (1) Psychologist (required) meeting the Qualified Developmental Disability Professional (QDDP) criteria which is a master's degree in psychology and at least one year experience working individuals who have mental retardation or a developmental disability.
- (2) Registered Nurse (required) who meets State licensure requirements;
- (3) Staff member (optional, as needed to supplement psychologist and registered nurse) who is qualified to complete social history and evaluations;
- (4) Physician (optional and as needed) meeting Missouri licensing requirements.

Support Coordinator (Formally Known as Service Coordinator) Roles/Responsibilities

The Support Coordinators needs to be informed that a Preadmission Screening needs to be completed on everyone that that is seeking admission to a nursing facility. They should also know that unless a special admission category is marked that payment will not begin until the preadmission screening has been completed.

If a client of the Regional Office is to be admitted to a nursing facility the regional office Support Coordinator needs to assist the NHR evaluators in completing the process.

For the individual living in a nursing facility the Support Coordinator should coordinate and assure the individual is receiving services as identified in their individual service plan.

If the individual is recommended not to go to a nursing facility the Support Coordinator should be prepared to explain other alternatives and placement choices to them.

The Support Coordinator should advocate and assist the individual to remain in their least restrictive environment.

Appeals Process

Both categorical and individualized preadmission screenings are appealable. This is applicable to both "requiring nursing facility level of services" and "need for specialized services". An individual may also appeal the mental retardation or developmental disability determination, or other issues

believed to adversely affect them (e.g. delay in admission due to DD not meeting evaluation time lines, etc.).

Currently, hearings are conducted by the DOSS, Division of Legal Services, Hearings Unit. Requests for appeal are to be directed to the DMH Medical Clinic Review Unit who will review and forward the request to DOSS. That agency will take responsibility for scheduling the hearing and notifying appropriate parties. Staff who conducted the evaluation will likely be asked to appear.

Refer to Section 5 in the NHR Manual for details.

Additional Considerations

Payment for the NF placement begins the date the Preadmission Screening is completed. This date is taken from the Resident Review Summary Sheet and is the date the evaluator notifies the individual or their guardian of the determination of the Level II evaluation.

**Missouri Department of Mental Health
Division of Developmental Disabilities
Resident Review Evaluation Summary**

Individual's Name _____ Medicaid ID _____
Nursing Facility _____ [] PAS [] Other
Evaluating Agency _____ Telephone No. _____ Evaluation Date _____

DD Evaluation

[] Has DD, Specify diagnosis _____
[] Does not have DD (Evaluation Ends) [] Has DD and Dementia (Must determine need for NF services)

Nursing Services Evaluation

[] Individual does not require NF services [] Individual requires NF services (must be specified below):

Monitoring _____
Medication _____
Treatments _____
Restorative Services _____
Rehabilitative Service _____
Personal Care _____
Behavioral/Mental Condition _____
Mobility _____
Dietary _____

Is the individual able and willing to negotiate a path to safety without direct assistance? [] Yes [] No
If "no" could the individual negotiate a path to safety with assistance with appropriate interventions? [] Yes [] No
If "yes" specify type of intervention: _____

Specialized Services Evaluation

Needs intensive DD specialized services, beyond those services a nursing facility can provide? [] Yes [] No
If "yes" is indicated, briefly describe living arrangement, treatments, activities and/or services needed: _____

Recommendation

Evaluation supports nursing facility as an appropriate living arrangement? [] Yes [] No
Date individual was notified of determination _____

Comments

All of the above information was based upon an intensive evaluation as required by federal law. A copy of the full evaluation will be sent to the individual or a responsible party and to the nursing facility to become part of the individual's medical record.

Signature Title Date